

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

BARRETT BUSINESS SERVICES,  
INC.,

Plaintiff,

v.

CHARLES COLMENERO and  
JANE DOE COLMENERO, and the  
marital community comprised  
thereof; and SANTIAGO ALEJO and  
JANE DOE ALEJO, and the marital  
community comprised thereof,

Defendants.

NO. 1:22-CV-3122-TOR

ORDER DENYING PLAINTIFF'S  
MOTION FOR TEMPORARY  
RESTRAINING ORDER

BEFORE THE COURT is Plaintiff's Motion for Temporary Restraining Order (ECF No. 8). This matter was submitted for consideration with oral argument on October 18, 2022. Suzanne K. Michael and Dean Pettita appeared on behalf of Plaintiff. Justo G. Gonzalez and Lance A. Pelletier appeared on behalf of Defendants. The Court has reviewed the record and files herein, and is fully

ORDER DENYING PLAINTIFF'S MOTION FOR TEMPORARY  
RESTRAINING ORDER ~ 1

1 informed. For the reasons discussed below, Plaintiff's Motion for Temporary  
2 Restraining Order (ECF No. 8) is **denied**.

### 3 **BACKGROUND**

4 This case arises out of Defendants' alleged misappropriation of Plaintiff's  
5 trade secrets. On September 15, 2022, Plaintiff filed the complaint against  
6 Defendants alleging the following cause of action: (1) breach of contract, (2)  
7 violation of Washington Trade Secrets Act, RCW 19.108.010(4), (3) violation of  
8 the Defend Trade Secrets Act of 2016 ("DTSA"), 18 U.S.C. § 1836(b), and (4)  
9 tortious interference with contractual relations. ECF No. 1 at 6-12, ¶¶ 4.1-4.5.

10 On October 6, 2022, Plaintiff filed the present motion for temporary  
11 restraining order seeking to enjoin Defendants from soliciting former and/or  
12 putative clients and workers and requesting the return of all misappropriated  
13 confidential business information. ECF No. 8. Except where noted, the following  
14 facts are not in dispute.

15 Plaintiff is a leading human resources management company that contracts  
16 with small and medium-sized businesses to provide comprehensive human  
17 resources management solutions, including temporary staffing and professional  
18 employer organization services. ECF No. 1 at 3, ¶ 3.1. Charles Colmenero began  
19 working for Plaintiff as an Area Manager in Hermiston, Oregon in April 2014. *Id.*,  
20

¶ 3.2. Santiago Alejo began working for Plaintiff as a recruitment specialist in July 2015. *Id.*, ¶ 3.3.

In connection with their employment, Colmenero and Alejo were provided with and access to confidential, proprietary, and trade secret information belonging to Plaintiff. *Id.* at 4, ¶ 3.4. Colmenero received the Employee Handbook and signed the acknowledgment on April 25, 2014. *Id.*, ¶ 3.5. Alejo received the Employee Handbook and signed the acknowledgement on July 17, 2015. *Id.* When they signed the acknowledgement/receipt, they confirmed that they agreed that:

I am aware that during the course of my employment confidential information will be made available to me, for instance, product designs, marketing strategies, customer lists, pricing policies and other related information. I understand that this information is proprietary and critical to the success of BBSI and must not be given out or used outside of BBSI's premises or with non-BBSI employees. In the event of termination, whether voluntary or involuntary, I hereby agree not to utilize or exploit this information with any other individual or company.

*Id.*

Colmenero and Alejo also received Barrett Business Services, Inc. Code of Business Conduct and the Acknowledgement and Confirmation of Receipt of the BBSI Code of Business Conduct on April 25, 2014 and July 17, 2015 respectively. *Id.*, ¶ 3.6. They agreed that they would: "Avoid conflicts of interest where possible and disclose and handle ethically any conflicts that do arise [and] Protect Barrett's

1 confidential and proprietary information and that of our customers and vendors.”

2 *Id.*, at 4-5, ¶ 3.6.

3       Additionally, the Employee Handbook contained policies regarding non-  
4 solicitation and policies governing employees’ access to Plaintiff’s trade secrets  
5 and other confidential and proprietary information: “Each employee has the duty to  
6 respect and protect the confidentiality of all such information, whether belonging  
7 to Barrett or others with which Barrett does business, and not to use that  
8 information for personal advantage.” *Id.* at 5, ¶ 3.7. 3.8. In addition to  
9 maintaining policies set forth above and requiring employees to acknowledge  
10 receipt of the code of conduct, the Plaintiff maintained rigorous information  
11 technology security protocols, include requiring usernames and passwords for  
12 employees, and allowing various levels of access to sensitive information  
13 depending upon position. *Id.*, ¶ 3.8.

14       On July 13, 2022, Colmenero ceased his employment with Plaintiff. *Id.*, ¶  
15 3.09. On July 8, 2022, Alejo ceased his employment with Plaintiff. *Id.*, ¶ 3.10.

16       By August 2022, Plaintiff learned that Colmenero and Alejo had established  
17 a competing business, Repsel Associates, Inc. d/b/a Personna Employer Services  
18 while working for Plaintiff. *Id.* at 6, ¶ 3.11. Upon discovery of the information  
19 that they had established this competing company while working for Plaintiff and  
20 while subject to the various obligations to which they had agreed, Plaintiff

1 subsequently discovered that the Defendants were approaching Plaintiff's  
2 customers and soliciting their business in direct violation of the various agreements  
3 and covenants imposed by law and contract. *Id.*, ¶ 3.12. Plaintiff also obtained  
4 information that the Defendants were directly competing with the Plaintiff and in  
5 fact soliciting and obtaining Plaintiff's customers by using Plaintiff's confidential  
6 and proprietary lists, processes, strategies, and pricing information. *Id.*, ¶ 3.13.

## 7 DISCUSSION

### 8 I. Subject Matter Jurisdiction

9 As an initial matter, Defendants challenge Plaintiff's assertion of subject  
10 matter jurisdiction. ECF No. 15 at 8-9.

11 [D]istrict courts shall have original jurisdiction of all civil actions arising  
12 under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.  
13 Under the Defend Trade Secrets Act (“DTSA”), Congress vested federal courts  
14 with original jurisdiction over civil cases involving the misappropriation of trade  
15 secrets “if the trade secret is related to a product or service used in, or intended for  
16 use in, interstate or foreign commerce.” 18 U.S.C. § 1836(b)(1). The interstate  
17 commerce element is a jurisdictional requirement. *United States v. Agrawal*, 726  
18 F.3d 235, 244-45 (2d Cir. 2013); *see also* H.R. Rep. No. 114-529, at 9 (2016)  
19 (“This *jurisdictional* nexus to interstate or foreign commerce...” (emphasis  
20 added).

1 Defendants assert the complaint only focuses on the competition in the  
2 greater Yakima Valley within Washington State. ECF No. 15 at 9. However, the  
3 complaint also alleges one of the Defendants, Mr. Colmenero, was Plaintiff's Area  
4 Manager in Oregon and that Defendants worked with clients in Washington and  
5 Oregon. ECF Nos. 1 at 3; at 8 at 6, 17 at 2. The allegation that Mr. Colmenero  
6 worked for Plaintiff in both Oregon and Washington is sufficient to allege trade  
7 secrets related to a service used in, or intended for use in interstate commerce. 18  
8 U.S.C. § 1836(b)(1). Therefore, the Court finds subject matter jurisdiction exists  
9 pursuant to the DTSA federal question. 28 U.S.C. § 1331.

## 10 **II. Temporary Restraining Order**

11 Pursuant to Federal Rule of Civil Procedure 65, a district court may grant a  
12 TRO in order to prevent "immediate and irreparable injury." Fed. R. Civ. P.  
13 65(b)(1)(A).<sup>1</sup> The analysis for granting a temporary restraining order is  
14 "substantially identical" to that for a preliminary injunction. *Stuhlbarg Int'l Sales*  
15 *Co., Inc. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). It "is an  
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17 <sup>1</sup> Plaintiff moved for a temporary restraining order but provided Defendant  
18 notice who appeared and argued on this matter. Thus, this matter may more be  
19 appropriately classified as a preliminary injunction under Fed. R. Civ. P. 65(a). As  
20 the standard is the same, the classification is not dispositive for this motion.

1 extraordinary remedy never awarded as of right.” *Winter v. Nat. Res. Def. Council,*  
2 *Inc.*, 555 U.S. 7, 24 (2008).

3 To obtain this relief, a plaintiff must demonstrate: (1) a likelihood of success  
4 on the merits; (2) a likelihood of irreparable injury in the absence of preliminary  
5 relief; (3) that a balancing of the hardships weighs in plaintiff’s favor; and (4) that  
6 a preliminary injunction will advance the public interest. *Winter*, 555 U.S. at 20;  
7 *M.R. v. Dreyfus*, 697 F.3d 706, 725 (9th Cir. 2012). Under the *Winter* test, a  
8 plaintiff must satisfy each element for injunctive relief.

9 Alternatively, the Ninth Circuit also permits a “sliding scale” approach  
10 under which an injunction may be issued if there are “serious questions going to  
11 the merits” and “the balance of hardships tips sharply in the plaintiff’s favor,”  
12 assuming the plaintiff also satisfies the two other *Winter* factors. *All. for the Wild*  
13 *Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (“[A] stronger showing of  
14 one element may offset a weaker showing of another.”). “[T]he district court ‘is  
15 not bound to decide doubtful and difficult questions of law or disputed questions of  
16 fact.’” *Int’l Molders’ and Allied Workers’ Local Union No. 164 v. Nelson*, 799  
17 F.2d 547, 551 (9th Cir. 1986). In the same vein, the court’s factual findings and  
18 legal conclusions are “not binding at trial on the merits.” *Univ. of Tex. v.*  
19 *Camenisch*, 451 U.S. 390, 395 (1981). The moving party bears the burden of  
20

1 persuasion and must make a clear showing of entitlement to relief. *Winter*, 555  
2 U.S. at 22.

3 *A. Likelihood of Success on the Merits*

4 Plaintiff argues that it is “likely to succeed on the merits of the underlying  
5 claims.” ECF No. 8 at 10. The Court notes Plaintiff did not brief the merits of its  
6 causes of action but summarily concludes it has “produced evidence tending to  
7 show that Colmenero and Alejo have unfairly solicited clients and workers and  
8 have misappropriated trade secrets from [Plaintiff].” *Id.* Plaintiff alleges breach of  
9 contract, trade secret misappropriation in violation of state and federal law, and  
10 tortious interference with contractual relations. ECF No. 1 at 6-12, ¶¶ 4.1-4.5.

11 1. Breach of Contract

12 In a breach of contract action under Washington law, the plaintiff must show  
13 (1) the existence of a valid contract, (2) breach of the contract, and (3) resulting  
14 damages. *Lehrer v. State, Dep’t of Social & Health Servs.*, 101 Wash. App. 509,  
15 516 (2000). Whether a signed employee handbook or code of business conduct  
16 forms a valid contract is a question of fact. *See Swanson v. Liquid Air Corp.*, 118  
17 Wash. 2d 512, 520-526 (1992); *Quedado v. Boeing Co.*, 168 Wash. App. 363, 370-  
18 375 (2012).

19 Here, Plaintiff asserts the signed copies of Defendants’ employment  
20 agreements are “missing” but that both files “would have signed a non-solicitation



1 agreement as part of their onboarding package, as BBSI makes this a habit.” ECF  
2 No. 9 at 8, ¶¶ 17, 18. Plaintiff instead proffers Defendants’ signed  
3 acknowledgement and confirmation of receipt of the employee handbook and code  
4 of business conduct, which Plaintiff asserts includes “BBSI’s binding trade secret  
5 and non-solicitation policies.” *Id.* at 5, ¶ 11. The Employee Handbook states that  
6 it is “an important document intended to help [the employee] become acquainted  
7 with BBSI. This Handbook will serve as a guide; it is not the final word in all  
8 cases.... Because the general business atmosphere of the Company and economic  
9 conditions are always changing, the contents of this handbook any be changed at  
10 any time at the discretion of the Company.” ECF No. 9 at 52.

11 With significant questions whether an enforceable contract exists based on  
12 the signed employee handbooks or codes of business conduct, the Court finds that  
13 Plaintiff has not shown a likelihood of success on the merits of the breach of  
14 contract claim at this time. *See Swanson*, 118 Wash. 2d at 520-526.

15 2. Washington’s Trade Secrets Act

16 The Washington Uniform Trade Secrets Act (“UTSA”) codified the  
17 principles of common law trade secret protection and allows plaintiffs to receive  
18 damages for misappropriation of trade secrets. *Ed Nowogroski Ins., Inc. v. Rucker*,

1 137 Wash. 2d 427, 438 (1999) (citations omitted); RCW 19.108.030. The UTSA  
2 defines trade secrets as:

3 [I]nformation, including a formula, pattern, compilation, program,  
4 device, method, technique, or process that:

5 (a) Derives independent economic value, actual or potential, from not  
6 being generally known to, and not being readily ascertainable by  
proper means by, other persons who can obtain economic value from  
its disclosure or use; and

7 (b) Is the subject of efforts that are reasonable under the  
8 circumstances to maintain its secrecy.

9 RCW 19.108.010(4)(a)-(b). Whether the specific information in question is a trade  
10 secret is an issue of fact. *Ed Nowogroski Ins., Inc.*, 137 Wash. 2d at 436 (citation  
11 omitted).

12 A plaintiff seeking a claim under the UTSA bears the burden of proving that  
13 legally protectable secrets exist. *Boeing Co. v. Sierracin Corp.*, 108 Wash. 2d 38,  
14 49 (1987) (citation omitted). Therefore, “a party must establish (1) that the  
15 information derives independent economic value from not being generally known  
16 or readily ascertainable to others who can obtain economic value from knowledge  
17 of its use and (2) that reasonable efforts have been taken to maintain the secrecy of  
18 the information.” *Modumetal, Inc. v. Xtalic Corp.*, 4 Wash. App. 2d 810, 823  
19 (2018). However, the plaintiff is not required to prove every element of  
20 information qualifies as a trade secret “since trade secrets frequently contain

1 elements that by themselves may be in the public domain but together qualify as  
2 trade secrets.” *Boeing Co.*, 108 Wash. 2d at 50 (citations omitted).

3 *i. Independent Economic Value*

4 One key factor courts consider in determining whether information has  
5 “independent economic value” is the effort and expense that was used to develop  
6 the information. *Ed Nowogroski Ins., Inc.*, 137 Wash. 2d at 438; *see also Lyft, Inc.*  
7 *v. City of Seattle*, 190 Wash. 2d 769, 782 (2018). Courts also consider the “novelty  
8 and uniqueness” of the information. *McCallum v. Allstate Prop. & Cas. Ins. Co.*,  
9 149 Wash. App. 412, 425 (2009) (quotations and citation omitted). “To be novel,  
10 the information must not be readily ascertainable from another source.” *Inteum*  
11 *Co., LLC v. Nat’l Univ. of Singapore*, 371 F. Supp. 3d 864, 877 (W.D. Wash.  
12 2019) (quotations and citations omitted). Through affidavits and declarations,  
13 plaintiffs must provide “specific, concrete examples illustrating that the . . .  
14 information meets the requirements for a trade secret.” *Modumetal, Inc.*, 4 Wash.  
15 App. 2d at 824 (quotation and citation omitted).

16 In the motion, Plaintiff summarily asserts the following trade secrets:  
17 temporary worker management techniques, marketing and sales strategies,  
18 recruitment and compensation practices, pricing, deal terms, and more. ECF No. 8  
19 at 2. Plaintiff also alleges it has confidential client contact information. *Id.* at 5.

20 Defendants disputes Plaintiff has trade secrets. As to the client identities,

1 Defendant asserts that the identities of potential Yakima-based employers requiring  
2 temporary staffing solutions are obvious, readily available on Google, and known  
3 to all industry participants. ECF No. 15 at 10. Indeed, Defendant points out that  
4 many of Plaintiff's client identities are disclosed on Plaintiff's website in the form  
5 of rotating testimonial client reviews. *Id.* As to the gross margins and pricing  
6 information, Defendant asserts that Plaintiff has no pricing model, software, or  
7 formulas, but rather has a gross markup for which Plaintiff provides zero corporate  
8 guidance. ECF No. 15 at 11. The margins are available on Plaintiff's public  
9 financial filings as a public company. *Id.* In reply, Plaintiff asserts the client  
10 identities are known only to those with specific knowledge of a client's desired  
11 start dates, work locations, and standard rates of pay. ECF No. 21 at 3. Plaintiff  
12 also asserts the temporary worker lists are trade secrets because they contain  
13 contact information and jobs worked by temporary workers who have expressed  
14 interest in specific work areas, have undergone initial onboarding, and have passed  
15 background checks. *Id.*

16       Considering the parties' arguments, Plaintiff failed to provide concrete  
17 examples to illustrate how these alleged trade secrets are either not readily  
18 ascertainable from another source nor does Plaintiff provide specific, concrete  
19 examples illustrating that this information otherwise meets the requirements for a  
20 trade secret. Washington courts consistently reject hypothetical competitive

1 advantage arguments as “speculative and conclusory” where a party fails to  
2 identify how its information is materially different from its competitors. *See, e.g.,*  
3 *Robbins, Geller, Rudman & Dowd, LLP v. State*, 179 Wash. App. 711, 724 (2014)  
4 (rejecting a law firm’s argument that its fee schedule and insurance information  
5 were trade secrets because they were specific to each client and took substantial  
6 time and effort to compile). Weighing Plaintiff’s speculative and conclusory  
7 allegations with Defendant’s proffer that the information is publicly available, the  
8 Court finds Plaintiff has not met its burden under Washington law to prove the  
9 information at issue derives independent economic value to qualify as a trade  
10 secret.

11 *ii. Reasonable Attempts to Preserve Trade Secrets*

12 A plaintiff must also establish that reasonable efforts have been taken to  
13 maintain or protect the secrecy of information at issue. *Modumetal, Inc.*, 4 Wash.  
14 App. 2d at 823. Here, Plaintiff provided sufficient evidence that it has policies and  
15 procedures to protect proprietary information, including security protocols,  
16 usernames, unique passwords, and policies and procedures in the handbook and  
17 code of conduct classifying information as confidential. *See, e.g.,* ECF No. 9 at 20.

18 However, because Plaintiff failed to establish that its information derives  
19 independent economic value, at this time the Court cannot find the information  
20 constitutes trade secrets under Washington’s UTSA. Therefore, Plaintiff failed to

1 demonstrate a likelihood of success on the merits of the UTSA claim.

2 3. Defend Trade Secrets Act

3 The Defend Trade Secrets Act (“DTSA”) authorizes private civil actions for  
4 misappropriation of trade secrets that are related to a product or service used in, or  
5 intended for use in, interstate commerce. 18 U.S.C. § 1836(b)(1). The relevant  
6 portions of the DTSA are almost identical to those in Washington’s UTSA.  
7 Compare 18 U.S.C. § 1839 with RCW 19.108.010; *Bombardier Inc. v. Mitsubishi*  
8 *Aircraft Corp.*, 383 F. Supp. 3d 1169, 1178 (W.D. Wash. 2019). The same  
9 evidence used to establish liability under Washington’s UTSA will also establish  
10 liability under the DTSA. See, e.g., *id.* at 1178; *Earthbound Corp. v. MiTek USA,*  
11 *Inc.*, No. C16-1150 RSM, 2016 WL 4418013, at \*10 (W.D. Wash. Aug. 19, 2016).

12 Because the Court finds Plaintiff has not established liability under  
13 Washington’s UTSA, it likewise finds Plaintiff does not demonstrate a likelihood  
14 of success on the merits of the DTSA claim.

15 4. Tortious Interference with Business Relationships

16 In a tortious interference claim under Washington law, plaintiff must show  
17 “(1) the existence of a valid ... business expectancy; (2) that defendants had  
18 knowledge of that [expectancy]; (3) an intentional interference inducing or causing  
19 a breach or termination of the ... expectancy; (4) that defendants interfered for an  
20 improper purpose or used improper means; and (5) resultant damage.” *Life*

1 *Designs Ranch, Inc. v. Sommer*, 191 Wash. App. 320, 337 (2015). The claims  
2 need specific evidentiary support; for example, in *Life Designs Ranch*, the court  
3 found the plaintiff’s conclusory claim of harm to reputation lacked evidentiary  
4 support where “[n]o client, potential client, or referral source submitted an affidavit  
5 establishing they can no longer trust [plaintiff] or did not choose [plaintiff’s]  
6 designs because of [defendant’s] website.” *Id.*

7 Here, Plaintiff offers no facts or analysis in support of its tortious  
8 interference claim. ECF No. 8. As a result, the record does not contain specific  
9 evidentiary support to show damage to any business expectancy, such as a client  
10 affidavit. *Life Designs Ranch*, 191 Wash. App. at 338. Therefore, Plaintiff has not  
11 demonstrated a likelihood of success on the merits of this claim.

12 *B. Likelihood of Irreparable Injury*

13 Plaintiff argues that it has incurred and will continue to incur significant  
14 irreparable harm as Defendants will continue to use Plaintiff’s confidential  
15 business information to solicit Plaintiff’s clients and workers to join their new  
16 company as Plaintiff’s competitor. ECF No. 8 at 8.

17 “Irreparable harm is traditionally defined as harm for which there is no  
18 adequate legal remedy, such as an award of damages.” *Arizona Dream Act Coal.*  
19 *v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014). “[I]ntangible injuries, such as  
20 damage to ongoing recruitment efforts and goodwill, qualify as irreparable harm.”

1 *Rent-A-Car, Inc. v. Canyon Television and Appliance Rental, Inc.*, 944 F.2d 597,  
2 603 (9th Cir. 1991). Deprivation of products that are unique or are not easily  
3 replaced may constitute irreparable harm. *Eastman Kodak Co. v. Collins Ink*  
4 *Corp.*, 821 F. Supp. 2d 582, 588 (W.D.N.Y. 2011). Finally, the threat of being  
5 driven out of business is sufficient to establish irreparable harm. *Am. Passage*  
6 *Media Corp. v. Cass Commc'ns, Inc.*, 750 F.2d 1470, 1474 (9th Cir. 1985). Under  
7 any theory of irreparable harm, the plaintiff must use provide evidence more than  
8 conclusory or speculative statements to support its claims. *Id.* at 1473.

9 While Plaintiff alleges intangible injuries to support its claim for irreparable  
10 injury, the Court finds the claims are not supported with evidence beyond  
11 conclusory or speculative assertions. ECF No. 9 at 6-10, ¶¶ 12, 16, 20. In contrast  
12 to Plaintiff's speculation, Defendants provided affidavits that no clients were  
13 solicited by Defendants: Rather, clients reached out to Defendants for quotes and  
14 asked Plaintiff whether the rates could be beat. *See* ECF Nos. 17 at 17, ¶¶ 42-46;  
15 18 at 8, ¶¶ 17-19; 19 at 2-3, ¶¶ 2-5. Outside of the speculative intangible injuries,  
16 the service at issue is not unique, appears to be easily replaceable, and Plaintiff  
17 does not allege that it is under threat of going out of business. Thus, Plaintiff has  
18 not clearly demonstrated irreparable harm.

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1 *C. Public Interest and Balance of the Equities*

2 As the record does not support a finding that Plaintiff is likely to succeed on  
3 the merits of its claims nor is it likely to suffer irreparable harm, the Court need not  
4 address the balancing of equities or public interest. *Herb Reed Enterprises, LLC v.*  
5 *Fla. Ent. Mgmt., Inc.*, 736 F.3d 1239, 1251 (9th Cir. 2013).

6 **ACCORDINGLY, IT IS HEREBY ORDERED:**

7 Plaintiff's Motion for Temporary Restraining Order (ECF No. 8) is

8 **DENIED.**

9 The District Court Executive is directed to enter this Order and furnish  
10 copies to counsel.

11 DATED October 19, 2022.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE  
United States District Judge